be similarly protected because he was also sometimes required to take part in the deliberations of the board. But a copy of the proposed resolution was also published to the Pendaftar Syarikat Malaysia, and it was not shown by the appellant that the Pendaftar had an interest or duty to receive it. In our judgment, the publication to the Pendaftar was libellous.

The protection afforded by the law to a publication made on an occasion of qualified privilege is not an absolute protection but depends on the honesty of purpose of the person who makes the publication. If he is malicious, that is, if he uses the occasion for some other purpose than that for which the law gives protection, he will not be able to rely on the privilege. If the publication takes place under circumstances which create a qualified privilege, in order to succeed the plaintiff has to prove express malice on the part of the defendant. Broadly speaking, express malice means malice in the popular sense of or desire to injure the person who is defamed. To destroy the privilege, the desire to injure must be the dominant motive for the defamatory publication. Knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in *bona fide* protection of his own legitimate interests. The mere proof that the words are false is not evidence of malice, but proof that the defendant knew that the statement was false or that he had no genuine belief in its truth when he made it would usually be conclusive evidence of malice. If the defendant publishes untrue defamatory matter recklessly without considering whether it be true or not, he is treated as if he knew it to be false. In ordinary cases, what is required on the part of the defamer to entitle him to the protection of the privilege is honest belief in the truth of what he published. But if he was moved by hatred or a desire to injure and used the occasion for that purpose, the publication would be maliciously made even though he believed the defamatory statement to be true. Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand when the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee* v. *Ritchie*[10].

Ajaib Singh J. made a finding that there was malice on the part of the appellant. We agree that there was evidence to support that finding. The appellant had already informed the Chief Police Officer about the unsatisfactory state of the accounting and had asked for the assistance of the police to investigate. There is no evidence to show that he enquired from the police of the result of investigation. Two months after writing to the Chief Police Officer, he already published the accusation against the respondent. Probably the police had no sufficient time to complete investigation yet. The learned judge also made a finding that the appellant was vindictive and malicious as the result of his having been removed as executive managing director and replaced by the respondent. Therefore in our judgment, the appellant's claim of privilege in respect of the publication of the accusation contained in the proposed resolution is defeated by the proof of his malice.

The learned judge fixed the amount of damages at $30,000 on the basis of his finding that all of the publications were libellous. We have shown that there was libel on one occasion only, and therefore we order that the amount be reduced to $15,000. Save that the amount of the damages is so reduced, the appeal is dismissed. As regards costs, we award to the appellant one-half of the taxed costs in this appeal.

Appeal dismissed; order accordingly.

Solicitors: *Nik Saghil, Yaacob & Ismail; Morgan & Co.*

DATUK BANDAR, KUALA LUMPUR v. BUKIT JALIL ESTATES SDN. BHD.

**[S.C. (Wan Suleiman, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.)
27 March 1987 & 11 March 1988]**

[Kuala Lumpur – Supreme Court Civil Appeal No. 365 of 1986]

Revenue Law – Payment of rates – Annual value – Agricultural land – Whether occupied – "Occupy" – Meaning of – Whether built upon – Local Government Act 1976, ss. 2, 141 & 145.

Local Government – Payment of rates – Annual value – Agricultural land – Whether occupied – "Occupy" – Meaning of – Whether built upon – Local Government Act 1976, ss. 2, 141 & 145.

The respondent company owns a rubber estate in the Federal Territory of Kuala Lumpur. The appellant issued

a notice of the valuation list showing a total annual value of $2,134.000 in respect of the lots comprising the estate. It was alleged that some of the lots were vacant, unoccupied and not built upon and therefore must be assessed on the basis of 10% of the open market value under proviso (c)(ii) to the definition of "annual value" in the Local Government Act 1976, and another lot was only partially occupied and built upon and therefore subject to assessment on the basis of 10% of the open market value under proviso (c)(i) of the definition.

On appeal to the High Court, the annual value was reduced to $277,832 which is the estimated gross annual rent. The appellant appealed.

Held, dismissing the appeal: (1) since the respondent company has cultivated the lots and used them for rubber tapping with exclusive possession, the lots are fully occupied. None of the lots is unoccupied or partially occupied under proviso (c) in the definition of "annual value"; and none of them is vacant because they are planted with rubber trees and one of the lots contains buildings on the portion where rubber is not planted;

(2) the words "partially built upon" and "not built upon" in proviso (c) in the definition of annual value apply to land alienated subject to building category. Since all the lots comprising the estate in this case are agricultural land completely occupied and not vacant, they do not come under proviso (c) irrespective of whether they are built upon, not built upon or partially built upon and in respect of them the annual value should be the estimated gross annual rent.

Case referred to:

(1) *Newcastle City Council* v. *Royal Newcastle Hospital* [1959] 1 All E.R. 734 (apprvd).

SUPREME COURT.

C.V. Das (*Ahmad Ghazali* with him) for the appellant.

Robert A. Lazar for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the judgment of the court): The respondent company owns a rubber estate called the Bukit Jalil Estate, which consists of four lots of land, *i.e.* lots 1706, 1171, 3418 and 1986, each held under a separate title. All of the lots are situated in the Federal Territory of Kuala Lumpur.

The Local Government Act 1976 has come into force in the Federal Territory of Kuala Lumpur since 1 January 1977 by order of the Minister made pursuant to section 1(3) of the Act. Pursuant to section 137, a valuation list of holdings not exempted from the payment of rates is maintained in respect of the Federal Territory of Kuala Lumpur, containing, *inter alia,* the names of the owner or occupier and the annual value of each holding. Pursuant to section 141, the Datuk Bandar of Kuala Lumpur issued a notice of the valuation list showing a total annual value of $2,134,000 in respect of the lots comprising the Bukit Jalil Estate. Being aggrieved, the respondent company raised an objection to the Datuk Bandar under section 142 on the ground that the lots were valued beyond their rateable value, but the objection was turned down. The respondent company appealed to the High Court under section 145 and the High Court allowed the appeal and ordered that the amount of $2,134,000 be substituted with $277,832 which is the estimated gross annual rent. The present appeal before the Supreme Court is brought by the Datuk Bandar against that order of the High Court.

The dispute between the appellant and the respondent arises from the interpretation of certain words contained in the definition of "annual value" in section 2. The relevant part of the definition is reproduced below:

> " 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:
>
> Provided that –
>
> (a) ...
>
> (b) ...
>
> (c) in the case of any land –
>
> (i) which is partially occupied or partially built upon; or
>
> (ii) which is vacant, unoccupied or not built upon;
>
> (iii) ...
>
> (iv) ...
>
> the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten *per centum* of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of subparagraph (ii) the annual value shall be ten *per centum* of the open market value thereof ..."

The Director of the Valuation and Estates Department of the Dewan Bandar Raya stated in his affidavit that lots 1706, 1171 and 3418 were vacant, unoccupied and not built upon and therefore they must necessarily be assessed on the basis of ten *per centum* of the open market value. Evidently, he applied proviso (c)(ii) to those lots. He also stated in his affidavit that lot 1986 was a very large lot with an area of 1,082 acres, but the staff bungalows, labour lines and factories only

occupy approximately 11 acres of the lot, and it was thus partially built upon and can also be considered to be partially occupied, and therefore he exercised his absolute discretion to assess it on the same basis. Evidently, he applied proviso (c)(i) to lot 1986.

The secretary of the respondent company affirmed in his affidavit that the estate has been in full operation and has been replanted to a large extent, and in 1976 the respondent company expended a sum of $86,532 on the replanting. The respondent company has so far not intended to cease operating the estate, and employs a labour force of about 180 persons, the majority of whom live on the estate in quarters provided for them. The estate is managed by a manager and three others of the staff, all living on the estate. The estate area is not zoned under the comprehensive development plan. In another affidavit filed on behalf of the respondent company, it is stated that all the four lots are planted with rubber trees of high yielding varieties. All of these facts were not refuted by the appellant. In fact, the Director of the Valuation and Estates Department admitted in his affidavit that all the lots are planted with rubber trees and they are under tapping, and that the lots are agricultural land. From these facts, it can be safely assumed that the respondent company has been in complete control and possession of the lots so as to exclude strangers and prevent them from trespassing or interfering with its possession or use of the land.

In order to determine whether the lots are unoccupied, partially occupied or fully occupied, it is necessary to be clear of the meaning of the word "occupy", which is not defined in the Act. The case of *Newcastle City Council* v. *Royal Newcastle Hospital*[1] throws some light on the meaning of the word "occupy". In that case, the respondent hospital, which was a public hospital, owned 291 acres of land just outside the hospital grounds. The land was still in its virgin state and was traversed by ridges and gullies, which were heavily timbered, with a good deal of underwood. The land was vacant land and there was no evidence sufficient to establish that it was used by patients or by the nursing staff. The land had been acquired for the purposes of the hospital, *i.e.* to keep the atmosphere clear and unpolluted, to prevent building on the land and so act as a barrier against the approach of factories and houses, to provide quiet and serene surroundings for the patients, and to give room to expand the activities of the hospital. The appellant city council claimed that the hospital was liable to pay rates on this land. The hospital claimed exemption under the New South Wales Local Government Act 1919, section 132(1)(d), which exempts "land which belongs to any public hospital, public benevolent institution, or public charity, and is used or occupied by the hospital, institution or charity, as the case may be for the purposes thereof". It was held by the Privy Council that the hospital was not liable to pay rates on the land since it was "used" by the hospital for the purposes of the hospital within the meaning of section 132(1)(d). Although the Privy Council found that it was not necessary to consider whether the land was "occupied" by the hospital, Lord Denning who delivered the judgment of the Privy Council went on to state:

> "In these circumstances, it is unnecessary for their Lordships to consider whether the 291 acres were 'occupied' by the hospital; but in view of the argument submitted to them, their Lordships would say a few words on it. The hospital was undoubtedly in legal possession of the 291 acres; for the simple reason that, where no one else is in possession, possession follows title. But legal possession is not the same as occupation. Occupation is a matter of fact and only exists where there is sufficient measure of control to prevent strangers from interfering: see Pollock and Wright on *Possession*, pp. 12, 13. There must be something actually done on the land, not necessarily on the whole but on part in respect of the whole. No one would describe a bombed site or an empty unlocked house as 'occupied' by anyone; but everyone would say that a farmer 'occupies' the whole of his farm even though he does not set foot on the woodlands within it from one year's end to another. Their Lordships have some doubt whether these 291 acres were 'occupied' by the hospital, because they were not fenced in or enclosed in any way, and it is difficult to say they were so much linked with the hospital grounds as to form part of an entire whole. But it is unnecessary to come to a conclusion on the point."

In *Possession in the Common Law* by Pollock and Wright, the following passages appear in the discussion on the subject of occupation of land:

> "We may say then that, in common understanding, that occupation at any rate is effective which is sufficient as a rule and for practical purposes to exclude strangers from interfering with the occupier's use and enjoyment. Much less than this will often amount to possession in the absence of anymore effectual act in an adverse interest. Indeed it seems correct to say that 'any power to use and exclude others, however small, will suffice, if accompanied by the *animus possidendi*, provided that no one else has the *animus possidendi* and an equal or greater power. To determine what acts will be sufficient in a particular case we must attend to the circumstances, and especially to the nature of the thing dealt with, and the manner in which things of the same kind are habitually used and enjoyed." (p. 13).
>
> "What acts amount to a sufficient occupation must depend upon the nature of the soil and the uses to which it is to

be applied. Where land is uncultivated and of little immediate use except for sport, shooting over it during some months of the shooting season may be enough to constitute *de facto* possession." (p. 31).

"Generally an occupation or use which is not on the face of it exclusive is not evidence of *de facto* possession; unless indeed the nature of the subject-matter be such that exclusive use is not possible or practicable. 'If there were an uninclosed field, and a man had turned his cattle into it, and had locked the gate, he might well claim to have a *de facto* possession of the whole field; but if there were an uninclosed common of a mile in length, and he turned [out] one horse on one end of the common, he could not be said to have a *de facto* possession of the whole length of the common.' " (p. 35).

So living on the land is not the only circumstance under which a person may be said to occupy it. A person is said to occupy a piece of land which he cultivates and of which he has the possession and control to the exclusion of others although nobody lives there. This is the true meaning of the word "occupy". The same meaning of the word can be gathered from other Acts of Parliament. So under the provisions dealing with temporary occupation of state land in the National Land Code, Division II, Chapter 2, a person is required to take out a temporary occupation licence if he wishes to cultivate a piece of state land although he does not wish to live on it. Part VII of the Land Acquisition Act 1960 contains provisions dealing with temporary occupation or use of alienated land on behalf of the government. When a Collector is authorized to occupy a piece of an alienated land after the requirements of those provisions have been complied with, certainly the Collector is not required to send people to live on it.

Since the respondent company has cultivated the lots and used them for rubber tapping with exclusive possession, the lots are fully occupied. None of the lots is unoccupied or partially occupied under provision (c) in the definition of "annual value"; and none of them is vacant because they are planted with rubber trees, and lot 1986 contains buildings on the portion where rubber is not planted.

The next question to consider is whether lots 1706, 1171 and 3418 fall under proviso (c)(ii) in view of the fact that there is no building on them, and whether lot 1986 falls under proviso (c)(i) in view of the fact that it is partially built. It seems that the purpose of proviso (c) is to discourage the owners of land in a local authority from keeping their land idle, by imposing the normal rate for land which is not kept idle and a higher rate in respect of land which is left idle. So land which is alienated for building purposes is imposed with a higher rate if it is left vacant and not built upon. Section 134(b) shows that a public burial ground licensee is liable to pay rate in respect of the burial ground. Normally, a burial ground does not contain any building because buildings are not required for burial purposes and they would hamper the use of the land for burials. The question is whether it is intended by the legislature that the licensee should be required to pay higher than the normal rate because there is no building on the burial ground or because it is not fully built up with buildings. We do not think that there is such intention. In our opinion, the intention is that a higher rate should be imposed on land which is left idle and not used for the purpose for which it has been alienated. So land which has been alienated for building purposes would be charged with a higher rate if it is not built upon so as to encourage the owner to build, and land which has been alienated for agricultural purposes would be charged with a higher rate if it is left vacant without cultivation. It would be unreasonable to expect that land alienated for agriculture should be fully built with houses. The law in this country discourages the use of agricultural land for buildings. Under section 115 of the National Land Code, apart from buildings to be used for agricultural purposes, the only buildings which are allowed to be built on agricultural land are buildings for the purpose of dwelling of the owner and persons employed in the agriculture and buildings for the purpose of providing welfare facilities to persons employed in the agriculture. Therefore in our view the words "partially built upon" and "not built upon" in proviso (c) in the definition of "annual value" apply only to land alienated subject to building category. Since all the lots comprising the Bukit Jalil Estate are agricultural land completely occupied and not vacant, they do not come under proviso (c) irrespective of whether they are built upon, not built upon or partially built upon, and in respect of them the annual value should be the estimated gross annual rent.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; Shearn Delamore & Co.*